

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, for the use of
BELT CON CONSTRUCTION, INC.,

Plaintiff,

vs.

No. CIV 02-1398 JB/LAM

METRIC CONSTRUCTION CO., INC. and
SAFECO INSURANCE COMPANY OF
AMERICA,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Defendants' Opposed Motion for Continuance of Hearing Date, submitted October 17, 2005. The Court held a hearing on this motion on October 17, 2005. The primary issue is whether the Court should vacate the hearing set for October 20th and when to reschedule it. Because the Defendants have presented the Court with good reasons why their counsel cannot attend the current setting, the Court will grant their motion and vacate the October 20th hearing. Counsel for both Defendants and the Plaintiff represented at the October 17, 2005 hearing, that they were available on November 1, 2005. The Court will set the new hearing for November 1, 2005 at 1:30 p.m.

PROCEDURAL BACKGROUND

The Defendants' counsel, Steven Meacham, is lead counsel in Metric v. United States, Case No. 02-0167C, in the United States Court of Federal Claims. Discovery is set to close in that case on October 27, 2005. On or about September 15, 2005, Mr. Meacham scheduled the deposition of Steven Weathers, the United States' expert witness, commencing on October 19, 2005 and

continuing through October 20, 2005 in Washington, D.C.

On September 16, 2005, Mr. Meacham booked the flights to Washington, D.C., departing on October 18, 2005 and returning October 21, 2005. On September 30, 2005, the United States' counsel requested the deposition location be changed to Philadelphia, Pennsylvania. Mr. Meacham agreed to this change in location, and Mr. Meacham changed his travel plans accordingly.

Mr. Meacham is scheduled to depart for Philadelphia on October 18th and return to Seattle on October 21st. On September 28th, the Court issued a notice of hearing scheduling a hearing on October 20, 2005 to hear the following three motions: (i) the Defendant's Motion to Alter or Amended Judgment; (ii) the Use Plaintiff's Motion for Attorney Fees; and (iii) the Use Plaintiff's Supplemental Motion for Attorney Fees. Mr. Meacham was in Las Vegas, Nevada preparing for and deposing an expert witness in Dynaletric v. Turnberry, Case No A445238 during the week of September 26, 2005.

Mr. Meacham was in Las Vegas on October 3 through 5, 2005 preparing for attendance at a mediation in Dynaletric v. Turnberry. Mr. Meacham returned to Seattle on October 5th; however, because of a bronchial and sinus infection, Mr. Meacham did not come into the office until Monday, October 10th. Early in the week of October 10th, Mr. Meacham learned for the first time of the hearing in the matter.

As set forth in the Court's order setting the October 20th hearing, Mr. Meacham immediately called Ms. K'Aun Sanchez, the Court's Courtroom Deputy Clerk, to notify her of the scheduling conflict. Because October 10th was a federal holiday, Ms. Sanchez did not answer the telephone. Mr. Meacham left a voice recording for Ms. Sanchez notifying her of the scheduling conflict.

Mr. Meacham left on October 12th for another business trip to Las Vegas. Mr. Meacham requested that his secretary, Ms. Melanie Frazier, contact Ms. Sanchez to confirm her receipt of the

earlier voice mail. Ms. Sanchez called Ms. Frazier on Friday, October 14th and notified her that the Defendants should contact Mr. William Derrick, the Plaintiff's counsel, to seek his concurrence in any request for a continuance of the hearing date.

Mr. Meacham was boarding a plane for a return flight to Seattle when he first learned of the need to contact Mr. Derrick; he requested Ms. Frazier to contact Mr. Derrick. Ms. Frazier was unable to get in touch with Mr. Derrick, but informed his secretary of the conflict. Mr. Derrick's secretary later returned the call to Ms. Frazier and informed her that Mr. Derrick is opposed to a continuance of the hearing date.

On October 17th, Mr. Meacham contacted Mr. Derrick regarding the continuance. Mr. Derrick agreed to continue the hearing to not later than October 28th. Mr Meacham has depositions scheduled in Seattle and Salt Lake City on October 24, 2005 through October 26, 2005.

Ms. Frazier contacted Ms. Sanchez to determine if the Court could reschedule the hearing for October 27th and 28th. Ms Sanchez indicated that those dates were unavailable. Mr. Meacham has three depositions scheduled in Seattle and Salt Lake City on October 24, 25, and 26, 2005, and a six-week arbitration in Las Vegas commencing on November 7, 2005.

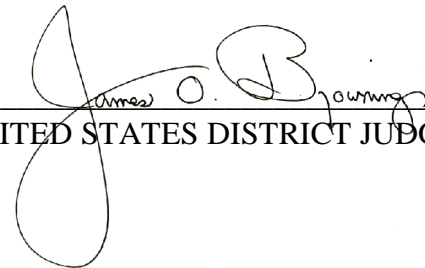
On October 17, 2005, Metric and Safeco filed this motion, moving for a continuation of the hearing on the which the Court has calendared for October 20, 2005.

ANALYSIS

Mr. Meacham has an unavoidable conflict on October 20, 2005. He will be deposing an expert witness in another case in Philadelphia on that same date. The Court will continue the hearing in this matter. The Court will reschedule the hearing for November 1, 2005 at 1:30 p.m.

IT IS ORDERED that the Opposed Motion to Continue Hearing Date is granted. The hearing set for October 20, 2005 is vacated. The Court will reschedule the hearing for November 1,

2005 at 1:30 p.m. This Order shall serve as notice to the parties that the rescheduled hearing will be held on November 1, 2005 at 1:30 p.m.



UNITED STATES DISTRICT JUDGE

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